

17 March 2020

**COVID-19 PANDEMIC**

**FREQUENTLY ASKED QUESTIONS ON EMPLOYMENT**

To enhance efforts to curb the Covid-19 outbreak, the Prime Minister of Malaysia (“PM”) announced on 16 March 2020 that a nationwide Movement Control Order (“MCO”) will be implemented from 18 March 2020 – 31 March 2020 (“Period”) under the Prevention Act and Infectious Disease Control 1988 and Police Act 1967. Please click [here](#) for the full text of the PM’s speech (in Bahasa Malaysia). So far, we have only received information that the Government has gazetted the Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 to declare all states in Malaysia to be infectious areas.

We have prepared the following FAQs which we hope will assist you with some of the issues that you may be considering during the Period. Please note though that the FAQs do not constitute legal advice and as the situation remain fluid and further information is awaited from the Ministry of Human Resources in particular, the legal position may change in the near future. If you require legal advice, please contact one of the lawyers in our Employment Practice Group listed below.

**1. Do employers have to close their businesses and/or places of employment?**

The MCO Announcement does not contain any explicit prohibitions on the operation of businesses during this Period. Under Restriction 6, employers are only required to close their business premises unless their businesses are “Essential Services”.

In practical terms, this means that employers in non-essential services cannot require their employees to attend at the place or premises of work but does not mean that working-from-home measures cannot be implemented, to the extent possible.

Employers are therefore permitted to organise online meetings or conference calls and require employees to attend to clients or customers, as long as the work-related activities in question can be performed remotely. Employers may also require employees to be accessible during regular office hours. Employers are advised to formulate Business Continuity Plans or work-from-home policies for application during this Period, if not already in place.

**2. Since there is no strict prohibition on carrying on business, can employers organise face-to-face meetings with employees, either in smaller groups or one-on-one?**

Restriction 1 of the MCO Announcement prohibits mass gatherings (*perhimpunan ramai*) of any kind. The MCO Announcement does not provide details on what amounts to “mass gathering” and it is currently unclear whether small groups may meet and gather in person. However, as the main purpose behind the MCO Announcement is to enforce social distancing between members of society, employers are advised not to require their employees to gather in any premise or location whatsoever for work-related purposes, irrespective of the size of the group.

**3. Can employers deduct the employees’ annual leave entitlement or enforce unpaid leave during this Period?**

Unless the contract of employment provides otherwise, the law does not permit annual leave entitlement to be set off against this Period. Neither can employers unilaterally require their employees to take unpaid leave during this Period.

If your employee is scheduled to take approved annual leave during this Period, on an application by you employee, you may cancel the same.

**4. What about employees currently on sick leave and maternity leave during the Period?**

A maternity leave period that overlaps with this Period will not affect the employee’s entitlement to or the duration of the maternity leave.

If the employee is on sick leave, the employee may not be required to work-from-home and the sick leave would be deducted from his or her normal entitlement.

**5. Can employers require their employees to come back to work during the Period if the employers’ business falls under the “Essential Services” provided for under the MCO Announcement?**

If the nature of your business falls under “Essential Services” as identified in the MCO Announcement, business can continue to operate as usual during this Period. As such, if employees in an essential service have been granted approved annual leave during this Period, if needs of the business make it necessary, you may revoke the approval of the annual leave to require employees to return to work.

**6. Can employees travel on business during the Period?**

Pursuant to Restriction 2 of the MCO Announcement, employers may not require their Malaysian employees to travel out of country during this Period. There is no similar prohibition on travel out of Malaysia for foreign employees.

There is also no restriction on inter-state travel within Malaysia. However, employers are reminded that Sarawak and Sabah have imposed quarantine requirements for visitors from Peninsular Malaysia which must be complied with. Notwithstanding this, employers are advised to restrict and/or minimise movement of the employees for work-related purposes to be in compliance with the holistic purpose of the MCO Announcement.

Restriction 3 of the MCO Announcement restricts entry of all foreign visitors and tourists into Malaysia. It is currently unclear if expatriate or foreign employees (and their dependents, where applicable) in possession of valid work passes or foreign nationals possessing Long Term Social Visit Passes are exempt from this Restriction. As is stands, based on the MCO Announcement, there appears to be a blanket ban on the entry of all tourist and foreign visitors into Malaysia during this Period. Given the discretionary nature of immigration laws, employers are advised that there is a risk that their expatriate and/or foreign employees who exit or have exited Malaysia may not be able to return during the Period.

There are no restrictions on foreign nationals remaining in employment in Malaysia during the Period.

**7. How should employers deal with Malaysian employees who return from overseas during this Period?**

Pursuant to Restriction 2, all Malaysians who return to Malaysia during the Period are required to undergo a health examination and self-quarantine for 14 days. During this period of self-quarantine, regardless of whether it overlaps with the Period, the employees may not attend at the workplace but may be required to work from home. The same principles regarding annual or unpaid leave will apply during the self-quarantine period.

**8. Are any of the events surrounding the MCO grounds for an employee claiming compassionate leave?**

No.

**9. Are employees entitled to the same salary or benefits during this Period?**

Generally, the entitlement to salary and/or other benefits remain the same. Benefits associated with actual attendance e.g. attendance allowance will however be affected.

**10. Can employers retrench, temporarily lay-off and/or impose pay cuts as cost-cutting measures?**

Yes, employers facing financial difficulties as a result of the Covid-19 pandemic may find it necessary to reduce its business costs and expense by amongst others undertaking retrenchments, lay-offs and/or pay-cuts.

Retrenchment should be in accordance to the general principles of industrial law, and retrenchment benefits may be payable. Temporary lay-offs and salary reduction may only be done after consultation and with the consent of the employees. Lay-off benefits may be payable under the Employment (Termination and Lay-Off Benefits) Regulations 1980. Where there is a collective agreement in place, all such action shall be taken in compliance with the same.

Where cost cutting measures include a period where employees will not be paid/ placed on unpaid leave, the PM announced on 16 March 2020 that employees may be able to claim RM600 per month for a maximum period of 6 months under a stimulus package provided by the Government.

These measures are separate from the MCO.

The information provided on this FAQ does not, and is not intended to, constitute legal advice.

The Skrine Employment Practice Group is monitoring the relevant developments and will from time to time issue updated FAQs.

The Government has issued FAQs which can be accessed [here](#).

Please contact the following if you have any queries :-

**Siva Kumar Kanagasabai**

*Partner*  
skk@skrine.com

**Selvamalar Alagaratnam**

*Partner*  
sa@skrine.com

**Foo Siew Li**

*Partner*  
foo.siewli@skrine.com

**Sara Lau Der Yin**

*Senior Associate*  
sara.lau@skrine.com

**Tan Su Ning**

*Senior Associate*  
tan.su.ning@skrine.com

**Chen Mei Quin**

*Associate*  
meiquin.chen@skrine.com

**Corinne Chin May Suet**

*Associate*  
corinne.chin@skrine.com